

SHARED PARENTING SCOTLAND

CHILD MAINTENANCE CHANGES – NOTES FROM TRAINING SESSION IN EDINBURGH ON 17/1/17

The system for assessing and collecting child maintenance payments between separated parents is part way through another change. The new system (CS3) changes the basis on which calculations are made, encourages parents to make “family-based” agreements and introduces charges for assessments and for the ongoing collection of maintenance. Parents who have been on the previous child support systems (CS1 and CS2) are having their cases closed. The last CS1 and CS2 cases will be closed by the end of 2017.

When a case is closed the parents can decide to enter into a written agreement about the sums to be paid, or else either party may decide to apply to the Child Maintenance Service for a maintenance calculation. Most people, when agreeing the amount to be paid will use the new maintenance formula as a guide, though that is not compulsory.

The government provides a service known as Child Maintenance Options to provide information to the public about maintenance, but the advice it provides is notoriously inaccurate. Similarly, DWP’s own on-line calculator is an unreliable way of calculating the maintenance which CMS would calculate in any given case.

Child maintenance is complicated, and within this note we can only mention some of the key changes and do not include all the details. For more information you can use the CPAG Child Support Handbook <http://www.shop.cpag.org.uk/child-support-handbook-201617> or consult the government web site <https://www.gov.uk/child-maintenance/overview>.

THE NEW CHILD MAINTENANCE FORMULA

Maintenance liability is now based on percentages of gross income figures as supplied by HMRC to the CMS (previously net income was used). This figure will be taken from your PAYE returns or from self-assessment figures provided by self-employed people, so may not be current. If the calculation is being made on a very old figure you may be able to challenge it, but the system can be inflexible and you may need to seek help. Self-employed people may find that it worth considering when to submit tax returns.

NIL RATE: no maintenance is paid by some prisoners, some full-time students and people with gross income below £7/week.

FLAT RATE: for weekly income of £100 or less or in receipt of various benefits = £7/week

REDUCED RATE: – gross income between £100 and £200/week

	Number of qualifying children		
Number of other children	One	Two	Three or more
None	17%	25%	31%
One	14.1%	21.2%	26.4%

Two	13.2%	19.9%	24.9%
Three or more	12.4%	18.9%	23.8%

Add the amount of the Flat Rate (currently £7 per week) to the product of the payer's gross income and the percentages given above for Reduced Rate.

BASIC RATE: this relates to gross incomes of £200 per week or more.

Number of qualifying children	Percentage of gross income up to £800	Percentage above £800
One	12%	9%
Two	16%	12%
Three or more	19%	15%

If the parent paying maintenance has one or more relevant children in his/her care, the gross income is first reduced by 11%, 14% or 16% if there are one, two or three or more relevant children before the calculations in the above table are done. These Relevant Other Children (ROCs) are those who live in the new family of that parent, and can be their children or those of their new partner. ROCs do not count if they live outside the UK.

SHARED CARE

If the parent paying maintenance has more than a certain number of nights caring for qualifying children then the maintenance calculation is reduced by a percentage (similar to the previous CSA calculation).

- 1 night per week One seventh reduction
- 2 nights per week Two sevenths reduction
- 3 nights per week Three sevenths reduction
- 175 or more nights 50% reduction

If the care of children is shared equally then no maintenance is payable regardless of what each parent earns, but if one of the parents is receiving child benefit then that parent is treated as the person to receive maintenance. This is covered in regulation 50 (2) of the 2012 scheme (CS3). If the statutory child support maintenance scheme is excluded by this provision then alimony is payable instead, using the criteria of the Family Law (Scotland) Act 1985 – the same rules which apply for step-children. The CMS will look at the terms of any agreement between the parents to assess how much care is to be shared over the year following the CMS decision. If no agreement, they may look at the pattern over the previous 12 months or a shorter period if appropriate. If the amount of shared care is not agreed but some exists then CMS will assume one night per week, until a supersession is sought and evidence provided.

THE HMRC FIGURE ISN'T ALWAYS RIGHT

Now that HMRC is providing income data to the CMS to calculate maintenance, there can be problems if that data is not correct. In this case a father successfully appealed to the Upper Tribunal to have an error corrected about the date on which his liability to pay child support ceased.

<http://www.familylawweek.co.uk/site.aspx?i=ed143023>

25% THRESHOLD

If you have had a reduction (or increase) in income since the figure used by CMS, this change has to be at least 25% before you can ask for the maintenance assessment to be adjusted. Request a revision or supersession if your income change is at least 25%. Lesser changes will be included in the annual recalculation.

VARIATIONS AND OTHER ADJUSTMENTS

There is less scope for variations in the CS3 scheme than previous schemes.

Deductions from gross income can be made for contact costs, including travel and accommodation while seeing the child above a certain threshold, cost of a long term disability or illness of a child, debts incurred before separation, the accommodation part of boarding school fees that are paid for a child for whom maintenance is payable and costs of the mortgage. The threshold for any expenses is £10 regardless of income, and if the expenses are over £10 the whole amount is deducted.

Diversion of income can be taken into account if the CMS is satisfied that the parent paying maintenance has unreasonably reduced the amount of income that is received, and unearned income may also be taken into account. The variation has to be just and equitable. There should be consideration of the impact on children in a second family.

REGISTERED MINUTE OF AGREEMENT

In Scotland, parents can enter into a minute of agreement which is registered with the court and this prevents application to CMS for a year. If the minute of agreement is registered – and most of them are – then the agreement is summarily enforceable without any application to the Court.

OLDER CHILDREN AND STUDENTS

The liability for child maintenance ends when a 16-19 yr old stops being eligible to have child benefit paid or is no longer in full-time, non-advanced education. That young person can seek support for further or higher education costs until age 25 applying the criteria of the 1985 Act mentioned above.

CHARGES UNDER THE CS3 SYSTEM AND TRANSITION ISSUES

CS3 has introduced charges. Maintenance assessments cost £20 and if the payment has to be made via the CMS has to collect maintenance then they charge an extra 20% on top of the assessment and also deduct 4% before paying the maintenance (collect and pay). The CMS can only set up collect and pay cases if parent who pays agrees or they have a reason to think that payments will not be made.

Parents who can agree their own arrangements for payment of maintenance (family based agreement) will not have to pay these charges even if they use the assessment to determine how much is paid. Make sure that payments are made by standing order, cheque or BACS so that they can be documented.

Even if parents cannot agree on payment arrangements or do not want to reveal bank details for payment, they can arrange to use direct pay. The parent receiving maintenance can set up a non-geographic bank account which is not linked to a local bank branch, and the CMS will pass these account details on to the person who is paying maintenance. These payments are not monitored by the CMS, unlike the collection service.

When payments start under the CS3 scheme once the previous case is closed, the person paying maintenance can insist on avoiding charges by using direct pay unless there are arrears or a past history of non-payment. In some cases such as those in the previous scheme with deduction from earnings orders, the paying parent may be allowed to avoid enforcement charges for a trial period in order to establish that direct pay is workable.

During the training session John provided three case studies to illustrate some of the principles. These were discussed in groups and then John went through the answers. Most of the points from these examples are included in this roundup.

SHARED PARENTING SCOTLAND is very grateful to John Fotheringham for his presentation at the event and for his comments on these notes. John is willing to try and answer questions on child maintenance, but this might have to be on a paid basis if it is a complex issue. He can be contacted via Shared Parenting Scotland.